IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

OP.No. 8153 of 2000(U)

PETITIONER:

M.B.RAGHUNANDANAN, MUTHEDATHU HOUSE, KOORKKENCHERRY VILLAGE, THRISSUR, POWER OF ATTORNEY HOLDER OF SURENDRAN AND MRS. SUDHA SURENDRAN, KOORKENCHERRY VILLAGE, THRISSUR.

BY ADV. SRI.P.K.RAVISANKAR

RESPONDENTS:
----

1. **THE DISTRICT COLLECTOR, TRICHUR.**
2. **REVENUE DIVISIONAL OFFICER, THRISSUR.**
3. **TAHSILDAR, THRISSUR.**

BY GOVERNMENT PLEADER SRI.C.K.GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12 /01 /2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO. 13576/2000 IN OP. NO.8153/2000

DISMISSED

12.1.2007 **SD/- K.BALAKRISHNAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE POWER OF ATTORNEY DT.3.5.1995.

E.XT.P2:- COPY OF THE RECEIPTS DT.17.121985 FOR RS.2,025 & 275/40.

EXT.P3:- COPY OF THE NOTICE OF DEMAND NO.C5- T.40/94 DT.28.8.95 ISSUED BY THE 3RD RESPONDENT.

EXT.P4:- COPY OF THE DEMAND NOTICE ISSUED BY THE 3RD RESPONDENT.

EXT.P5:- COPY OF THE ORDER NO.K.DIS. 10572/93/C1 DT.17.12.1999 PASSED BY THE 2ND RESPONDENT.

EXT.P6:- COPY OF THE REVISION PETITIONER FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DT. JANUARY 2000.

EXT.P7:- COPY OF THE ORDER NO. B4-5500/2000 DT.21.2.2000 PASSED BY THE 1ST RESPONDENT.

/TRUE COPY/

tss

K.BALAKRISHNAN NAIR,J.

OP NO.8153 OF 2000-U

Judgment

The petitioner has approached this Court, feeling aggrieved by the assessment of property tax for a building constructed by Mr.Surendran and Mrs.Sudha Surendran. The petitioner is their power of attorney holder. According to him, the construction of the ground floor and the first floor of the building was completed in 1984-85 and the assessment of building tax for that portion was made as per Ext.P3 on 28.08.1995. The amount was paid by the owners of the building. Still later, some additional constructions were made in 1999. So, an assessment was made by the Tahsildar as per Ext.P4 under Section 5(4) of the Building Tax Act. According to the petitioner, the assessment should have been made under Section 5(3) of the said Act as the ground floor and the first floor were constructed before the appointed day i.e., 10.02.1992. The petitioner appealed. The RDO dismissed the appeal by Ext.P5 order dated 17.12.1999. He filed Ext.P6 revision before the District Collector. That was dismissed by Ext.P7 order dated 21.02.2000. Hence this OP, challenging Exts.P4, P5 and P7. According to the petitioner, since the first construction was made before the appointed day, the building tax for the additional construction should have been made only under Section 5(3) of the Building Tax Act.

2. The third respondent has filed a counter affidavit, in which it is submitted that the first construction was made only in 1994, after the appointed day. The petitioner filed the return concerning construction of the ground floor

and the first floor in 1994 and based on that return filed on 04.02.1994, Ext.P3 assessment was made. Since the subsequent construction was also made after the appointed day, the provisions of Section 5(4) of the Act were invoked and the assessment was made, reckoning the entire area at the rate applicable in 1999. The payment already made by the petitioner was given credit, it is submitted. The petitioner has not filed any reply affidavit. The entire case of the petitioner is built up on the submission that the ground floor and the first floor were constructed in 1984-85. In view of the averments in the counter affidavit, which remain uncontroverted, the contention of the petitioner cannot be accepted. Further, this factual dispute cannot be resolved under Article 226 of the Constitution of India. Accordingly, the OP fails and it is dismissed.

12.01.2007 **K.BALAKRISHNAN NAIR,JUDGE**

sta